IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12746 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JANTA CREDIT CO-OP SOCIETY LTD - Petitioner(s)
Versus
KISHORBHAI VALLABHBHAI PATEL - Respondent(s)

==========

Appearance :

MR DIPAK R DAVE for Petitioner(s) : 1,MR HEMANG R RAWAL for Petitioner(s) : 1,
MRS KRISHNA G RAWAL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 31/07/2006

ORAL JUDGMENT

1. Rule. Learned advocate Mrs. Krishna G. Rawal waives service of notice of rule on behalf of

respondent. At the joint request of learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner-Credit Cooperative Society has challenged an order dated 29-5-2006 passed by the Cooperative Tribunal. There is a long history leading to this petition. However, facts in the nutshell as are necessary to appreciate the controversy between the parties are that the respondent herein is a co-defendant in a Summary Suit filed by the petitioner being Lavad Suit No.380/2004 before the Board of Nominees. The petitioner is aggrieved by the order passed by the Tribunal on 29-5-2005 in so far as the same does away with the requirement of the respondent herein to deposit 15% of the suit amount to be able to defend the suit.

3. Earlier the said condition was imposed by the Tribunal which came to be challenged by the respondent before this Court. Learned Single

Judge of this Court by an order dated 7-2-2006 was pleased to uphold the said condition imposed by the Tribunal in its order 27-6-2005. It may be noted that in the meantime, the Board of Nominees had also passed a final decree against the defendants and the defendants were in appeal before the Tribunal. This Court therefore, in the above mentioned order requested the Tribunal to expedite the hearing of the appeal. Pursuant to the said impugned order, order came to be passed by the Tribunal. By the said order, the Tribunal remanded the said proceedings before the Board of Nominees and granted certain consequential directions. Interim relief granted earlier against the properties of the defendant was ordered to be continued till final disposal of the Lavad Suit. The Tribunal did not specify any requirement of depositing 15% of the suit amount by the present defendant.

4. I find that the said condition of depositing 15% of the suit amount to enable the defendant to defend the suit had achieved finality. This

Court had in the said order dated 7-2-2006 has in terms upheld the condition imposed by the Tribunal. In any manner, while disposing of the appeal filed by the respondents including the respondent herein, the Tribunal could not have diluted the said requirement. Even if it was found appropriate to remand the proceedings for fresh consideration by the Board of Nominees, same could be done only after requiring the defendant to deposit the respective amount which the opponent herein was required to deposit i.e. 15% of the suit amount. The Tribunal therefore, could not have requested the Board of Nominees to hear the suit afresh on merits without the opponents herein fulfilling such condition.

5. In the result to the above extent, the order passed by the Tribunal calls for interference. In the conclusion, it is directed that the opponent herein shall deposit 15% of the suit amount with the petitioner-society within a period of four weeks from today. Only upon fulfilling such a condition, it will be open for

the opponent to defend himself before the Board of Nominees. To the above extent, the order of the Tribunal shall stand modified. As was pointed at the earlier stage of the litigation, it will be open for the opponent to request the Society to adjust his deposits lying with the Society to the extent the same are not encumbered. Any shortfall thereafter, shall have to be made good by the respondent. The petitioner society shall within a period of one week from today, indicate the sum that is required to be adjusted in the above manner. The remaining amount shall be deposited within the time granted.

6. With these directions, petition is disposed of. Rule made absolute to the above extent with no order as to costs.

(Akil Kureshi,J.)

(raghu)